

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

PAUL SWISHER,

Plaintiff,

v.

LISA COLOGNA, *et al.*,

Defendants.

Case No. 2:15-cv-01138-MMD-GWF

ORDER

On August 29, 2016, Plaintiff was directed to show cause why the Court should not dismiss this action for Plaintiff's failure to comply with the Courts Order to notify the Court of whether he intends to retain new counsel to represent him and to comply with LR IA 3-1 by notifying the Court of any change of address. Plaintiff was given until September 22, 2016, to respond to the order. (ECF No. 84.)

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*

1 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
2 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
3 for lack of prosecution and failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to
5 obey a court order, or failure to comply with local rules, the court must consider several
6 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
7 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
8 favoring disposition of cases on their merits; and (5) the availability of less drastic
9 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,
10 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

11 In the instant case, the Court finds that the first two factors, the public's interest in
12 expeditiously resolving this litigation and the Court's interest in managing the docket,
13 weigh in favor of dismissal. The third factor, risk of prejudice to defendant, also weighs
14 in favor of dismissal, since a presumption of injury arises from the occurrence of
15 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
16 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor — public
17 policy favoring disposition of cases on their merits — is greatly outweighed by the factors
18 in favor of dismissal discussed herein. Finally, a court's warning to a party that his
19 failure to obey the court's order will result in dismissal satisfies the "consideration of
20 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
21 *Henderson*, 779 F.2d at 1424. The Court's order expressly stated: "Failure to respond
22 will result in dismissal of this action." (ECF No. 84.) Thus, Plaintiff had adequate
23 warning that dismissal would result from his noncompliance with the Court's order.

24 It is therefore ordered that this action is dismissed without prejudice based on
25 Plaintiff's failure to comply with the Courts Order to show cause why the Court should
26 not dismiss the action for Plaintiff's failure to notify the Court of whether he intends to
27 retain new counsel to represent him and to comply with LR IA 3-1 by notifying the Court
28 of any change of address.

1 It is further ordered that all pending motions are denied as moot.

2 The Clerk is directed to close this case.

3 DATED THIS 27th day of September 2016.

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6 MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
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